



SHORELAND ZONING NEWS

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Please Share

For over 15 years, the *Shoreland Zoning News* has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we've been getting. Unfortunately, we also hear that the *News* is not getting to everyone who would like to see it.

We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.



MORE HIGHLIGHTS REGARDING THE NEW STATE GUIDELINES

Since our last issue of the *Shoreland Zoning News*, the deadline for towns to amend their local ordinances in accordance with the updated version of the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Guidelines), Chapter 1000, has been formally set to be July 1, 2008. Although previously we had anticipated that towns will have around 2 years to complete this task, the Board of Environmental Protection formally adopted this date earlier this year. This provides most towns with at least two annual town meetings in order to accomplish this goal.

Judging by the number of calls from towns we have received with questions about the new Guidelines, it is clear that towns have begun the process of preparing their ordinances and maps for amendment.

Also, by the time you read this newsletter, we have likely completed a series of workshops for town officials and town board members where we summarized and clarified the changes to the Guidelines that towns will be considering. Many thanks to the regional council's of governments and planning commissions for arranging, promoting, and hosting these workshops.

In previous issues of the "News," we highlighted a number of the key Guideline changes. Several other important changes that we did not mention previ-

ously, and that have resulted in some good discussion at the regional meetings that were held, include changes to the buffer clearing standards, clarification of the upland edge of a coastal wetland, new general development district setbacks, shed allowance, and new driveway standards. We will attempt to summarize these important changes in the remainder of this newsletter.

The buffer clearing standards have been revamped, and the new standards are now consistent with the clearing standards found in the Natural Resources Protection Act (NRPA). Please recall that the NRPA clearing standards only apply to buffers adjacent to non-shoreland zoned areas, not to those areas already shoreland zone regulated by your town.

You may also recall that in the original standards there were three thresholds that could not be exceeded during a vegetation removal activity. They included prohibiting the size of a cleared opening in the canopy to no more than 250 square feet in area, maintaining a minimum number of points of trees per any 25-foot by 25-foot area, and the removal of trees could not exceed 40% of the volume of trees in a 10-year period.

The new clearing standards now use a 25-foot by 50-foot series of plots in which one must retain a minimum number of points of trees. Because the plot area

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doubled, so to did the minimum number of points of trees that must be retained. The 250 square foot canopy opening restriction and the 40% volume removal limitation remain the same.

Another change to the clearing standards includes a provision that requires the retention of at least 5 saplings per plot. If no saplings are present, no woody stems less than 2 inches in diameter can be removed until 5 saplings have been recruited into the plot. In addition, all vegetation less than 3 feet in height and other ground cover must be retained within the buffer of all shoreland zoned areas. Previously, this requirement only pertained to buffers adjacent to a great pond or rivers or streams that flow to a great pond. It has been realized that the low growing buffer vegetation and ground cover is important to protect water quality for all resources.

The new clearing standards should result in the retention of a good buffer, yet in most cases should still provide a good view to the water for landowners.



General Development Districts I & II

With the Guideline changes came a change to the General Development District. The “old” Guidelines allowed such districts to be created with a minimum development setback of only 25 feet from a shoreland zoned resource. It did not matter if the creation of a general development district occurred in an existing developed area, such as a village area, or along an undeveloped area of shoreline.

Over time, however, comprehensive plans and other planning efforts began to identify undeveloped shoreline areas as possible future general development areas. While we feel it is important to allow such districts, we also feel that if a new general development district is proposed

along an undeveloped shoreline then a larger buffer should be retained between structural development and the resource.

As a result, we created a new General Development II District and the original General Development District became the General Development I District. The General Development II standards will apply to those newly proposed general development areas and will require a minimum 75-foot buffer. Existing districts may continue to retain the original standards, including the minimum 25-foot buffer, but the district would change to a General Development I District.

To some degree the original general development district with a 25-foot buffer was created as a best-fit district to accommodate those areas in towns with existing intensive development close to the water. Most all these areas are already zoned with the General Development I standards so we don’t expect much heartburn as a result of this change.



Coastal Wetlands, Sheds, and Driveways

There were changes to three other areas within the Guidelines, coastal wetlands, sheds, and driveways. The changes range from being more restrictive to being less restrictive.

First, for many years a coastal wetland has been defined to include all tidal and subtidal areas below the elevation of the sea during the maximum spring tide. The maximum spring tide line (MSTL) is essentially the highest tide level for the year in which an activity is proposed as identified on tide tables published by the National Ocean Service.

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Miscellaneous Notes From the SLZ Unit...

- In our last issue of the News we mentioned that our Bangor staffer had left the Department for greener pastures, which resulted in a vacancy for us. We are pleased to announce that the position has been filled since that time by Jennifer Cayer. Jenn has quickly come up to speed with her work in shoreland zoning and is a great resource for the Bangor region. Please contact her with shoreland zoning questions for that region at 941-4116.
- Also, the Department’s land licensing unit lost it’s coordinator, Judy Gates, to the Department of Transportation. She did an excellent job for the Department and we wish her well. Her vacated position has been filled by Jim Cassida, formerly the Augusta region land enforcement supervisor. Colin Clark has since become the new Augusta region enforcement supervisor. Congratulations to both Jim and Colin.

Unfortunately, also for many years some CEO's, planning boards, surveyors, contractors, and the like have misunderstood this term and have mistakenly established the upland edge of the coastal wetland as something other than MSTL. Quite often the *mean* high tide line has been used, which is usually at least several feet below the MSTL (vertically measured). This resulted in some significant horizontally measured deviations when setbacks were being determined. We have clarified this language further to (hopefully) make it perfectly clear that MSTL represents the upland edge.

You may also note that the reference to debris lines has been removed under this same definition. We were consistently finding that the debris line caused a more restrictive setback due to storm surge or wave action pushing the debris line further shoreward than the MSTL elevation. It has also been difficult to use the debris line method when several debris lines were present. This change should benefit landowners.

As another landowner benefit, we now allow a landowner to construct a small shed within the buffer area (with a CEO permit) to store yard tools, lawnmowers, gasoline cans, etc. There are, as always, restrictions to where the shed may be located and also the size of the shed.

A shed may be no larger than 80 square feet nor higher than 8 feet in height. Further, the shed must be located as far from the shoreline as practical and may only be allowed within the buffer if there is no location available outside of the setback area. In addition, a shed must meet all other applicable standards, such as lot coverage and vegetation removal limitations. And in no case shall a shed be located closer to the water than the principal structure.

While some town have expressed dissatisfaction with relaxing the standards, we have also heard far more positive comments regarding this change. Rest assured, this change is not a required change for towns so if your town is not in favor of it you certainly do not need to adopt the shed allowance.

Lastly, as you know, the Guidelines (and your local ordinances) have contained standards for road construction within the shoreland zone. We have frequently found that driveways are constructed that do not conform to construction Best Management Practices and end up resulting in a significant erosion and sedimentation source to the nearby protected resource. Therefore, we have now applied most of the road construction standards to driveways within the shoreland zone.

Hopefully the application of the new driveway standards will eliminate some of the past problems we were finding.



Reminder, reminder, reminder...

- As noted in previous editions of the Shoreland Zoning News, in 2005 the Legislature adopted a new law requiring towns to submit notice of a shoreland variance request to boards of appeals. The notice must contain a copy of the application for variance and other supporting information, and must be submitted (according to the law) at least 20 days prior to the date that the board of appeals holds a hearing on the variance application. Although more towns have been submitting these as required, we are confident many towns are still not complying with this law. We expect this may be due to many towns not being aware of this requirement, hence the reminder (again).
- As your town begins to work on amending its ordinance and map with the new Guidelines changes, please remember to that we have created 5 different versions of the Guidelines to assist you in this process. The versions include the complete/full version, a version with strike-out & underline format so you can see the specific changes, a version for inland towns, and two versions that contain the timber harvest repeal language, one for any town and one for inland towns (without tidal waters).
- As your town completes its ordinance and map amendment process to incorporate the new Guideline changes, please remember that a certified copy must be submitted to the Department and be approved by us in order to become legally effective.



We're Looking for Some Good Stories and Questions!!

Have any good tales from the field? Nightmares from the courtroom? Questions that frequently arise? Feel free to contact us with these quips and we will consider sharing the stories in this newsletter in an effort to help others. The Shoreland Zoning News is intended to provide you with information to help you do your job!



More Notes:

Due to an extremely high volume of work, partially attributed to the Guideline changes, Department staff are seeking more efficient ways to assist towns and the general public. In some cases simply reviewing digital photos would reduce staff time spent in the field. As such, we will be asking you to e-mail us digital photographs of sites, where practical, so that we might be able to provide an answer without needing to drive to the site. We certainly enjoy going into the field meeting with you, however, instead of having to tell you we can't help because we don't have time to visit a site we might still be able to assist you, albeit electronically!

Contact Us:

Rich Baker, Coordinator, Augusta:	287-7730
Jennifer Cayer, Bangor :	941-4116
Marc Russell, Presque Isle	764-0477
Mike Morse, Portland	822-6328

Questions & Answers:

Q. We have received a copy of the new Guidelines edited for towns that wish to repeal the timber harvest standards. Why on earth are the standards still in this version?

A. The reason is simple- well, sort of. Simply stated, in order for the Statewide Timber Harvest Standards to take effect, a minimum number of towns must either adopt the new standards or repeal timber harvesting from their ordinances. Until the time that enough towns act on either option the Maine Forest Service (MFS) will not take over the administration and enforcement of the standards. Still though, the Mandatory Shoreland Zoning Act requires towns to administer and enforce timber harvesting standards until the MFS takes over. Therefore, your town will need to adopt the timber harvest standards, along with repeal language that will take effect if and when the MFS takes over.



DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF LAND AND WATER QUALITY,
17 STATE HOUSE STATION
AUGUSTA, ME 04333